

**No. 22-16826**

**IN THE UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

TGP COMMUNICATIONS LLC,  
d/b/a THE GATEWAY PUNDIT, et  
al.,

Plaintiffs-Appellants,

v.

JACK SELLERS, et al.,

Defendants-Appellees.

D.C. No. 2:22-cv-01925-JJT

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

**DEFENDANTS-APPELLEES' RESPONSE TO  
PLAINTIFFS-APPELLANTS' MOTION TO EXPEDITE APPEAL  
[EMERGENCY MOTION UNDER CIRCUIT RULE 27-3]**

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*Attorneys for Defendants-Appellees*

Pursuant to Federal Rule of Appellate Procedure 27(a)(3), Defendants-Appellees respond in opposition to Plaintiffs-Appellants TGP Communications and Jordan Conradson’s November 29, 2022 “Motion to Expedite Appeal [Emergency Motion Under Circuit Rule 27-3]” (“Motion to Expedite Appeal”). The following Memorandum of Points and Authorities supports this position.

### **Memorandum of Points and Authorities**

#### **Argument**

There is no emergency to justify such an absurdly short briefing schedule in this appeal. This Court should deny Plaintiffs-Appellants’ Motion to Expedite Appeal.

Plaintiff-Appellant Jordan Conradson submitted a request for a press pass to Maricopa County officials on September 27, 2022. (Dist. Ct. Dkt. No. 2-2.) On **September 30, 2022**, that press pass was denied. (Dist. Ct. Dkt. No. 2-1.) On November 10, 2022—41 days later—Conradson attempted to appeal that denial. (*Id.*)

Indeed, Plaintiffs-Appellants TGP and Conradson waited **43** days to bring suit and seek an emergency temporary restraining order on **November 12, 2022**. (Dist. Ct. Dkt. Nos. 1, 2.) The district court denied that relief on November 23, 2022 (Dist. Ct. Dkt. No. 27.) Relevant to the analysis of this “emergency” request and its claim of “irreparable harm” under Circuit Rule 27-3, the District Court rejected Plaintiffs-

Appellants’ irreparable harm argument below because (a) the press conferences to which Conradson seeks access are livestreamed on YouTube and (b) Plaintiffs-Appellants waited 41 days to appeal the press pass denial. (*See id.* at 15–16); *Alaska Landmine, L.L.C. v. Dunleavy*, 514 F. Supp. 3d 1123, 1134 (D. Alaska) (finding the harm of being excluded from press conferences *de minimis* where the public can access livestreams of such conferences). And, while considering the likelihood of success of the merits below, the District Court correctly stated that “[t]he Seventh Circuit upheld the constitutionality of these same criteria [used by the Defendants-Appellees] just last year.” (Dist. Ct. Dkt. No. 27 at 7) (citing *John K. MacIver Inst. for Pub. Policy, Inc. v. Evers*, 994 F.3d 602, 606, 610–15 (7th Cir. 2021).)

Now, Plaintiffs-Appellants filed a notice of appeal on Monday, November 28, 2022, **five** days after the District Court’s order. In contrast, in their Motion, Plaintiffs-Appellants ask this Court to give Defendants-Appellees only **two** days to respond to their opening brief on appeal.

Meanwhile, the lead attorney for Defendants-Appellees is out of town on a preplanned vacation. Additionally, the other attorneys appearing on behalf of Defendants-Appellees in this case (including undersigned counsel) are responsible for handling and supervising time-sensitive election litigation for Maricopa County and the Maricopa County Recorder.

The circumstances—particularly Plaintiffs-Appellants’ dilatory conduct from the day the press pass was denied (**September 30, 2022**) to the day they brought suit and sought the temporary restraining order (**November 12, 2022**)—fail to justify such a compacted appellate briefing schedule.

As opposing counsel indicated in the Motion, undersigned counsel has no objection to an expedited briefing schedule modeled on Circuit Rule 3-3(b) if the Court deems it appropriate. But undersigned counsel will be hard-pressed to devote the attention to this matter that it deserves and craft a brief that assists the Court in resolving this interlocutory appeal if required to meet an arbitrary deadline of this Friday.

## Conclusion

In sum, this Court should deny Plaintiffs-Appellants' Motion to Expedite Appeal.

Respectfully submitted this 29th day of November 2022.

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## **Certificate of Compliance**

This response contains 522 words. The response's type size and typeface comply with Fed. R. App. P. 27(d)(2)(E). I certify that this brief complies with the length limit of Fed. R. App. P. 27(d)(1).

Respectfully submitted,

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November 29, 2022

## Certificate of Service

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

### **Service on Case Participants Who Are Registered for Electronic Filing:**

[ ] I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

### **Service on Case Participants Who Are NOT Registered for Electronic Filing:**

[ ] I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (list each name and mailing/email address):

Respectfully submitted,

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